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CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1068

Introduced by Assembly Member Campbell

February 27, 1997

An act to amend Sections 1265.5, 1276.5, 1337.9, 1338.5, ~~and 1522~~ 1522, 1736.5, and 1736.6 of the Health and Safety Code, relating to human services, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1068, as amended, Campbell. Health and community care facilities.

Existing law requires the State Department of Health Services to secure a criminal record prior to the initial licensure or renewal of a license of any person or persons to operate or manage an intermediate care facility/developmentally disabled-habilitative to determine whether the applicant, facility administrator or manager, any direct care staff, or any other adult living in the same location has ever been convicted of a crime other than a minor traffic violation.

This bill would apply this criminal record check requirement to an intermediate care facility/developmentally disabled-nursing and an intermediate care facility/developmentally disabled, other than a ~~facility~~ *an intermediate care facility/developmentally disabled* operated by the state that secures criminal record clearances for its employees through another method or upon hiring any direct care staff. ~~The~~

~~The~~ bill would require the department to develop procedures to ensure that *any licensee, direct care staff employed by facilities that secure, or certificate holder for whom* a criminal record clearance ~~through a method other than~~ *has been obtained* pursuant to these provisions or *provisions governing criminal record clearances for nurse assistants and home health aides* shall not be required to obtain a ~~new or additional~~ *multiple* criminal record clearance upon transferring to another intermediate care facility clearances.

Existing law requires that the application or reapplication be denied if a conviction for a crime other than a minor traffic violation is found, unless otherwise approved pursuant to the licensing provisions.

This bill would, instead, require the denial of the application for licensure or renewal if the criminal record check indicates convictions of specified offenses, *unless certain conditions exist*. The bill would authorize the denial of the application for licensure or renewal if the criminal record check indicates conviction of offenses other than those specified, and other than minor traffic violations. The bill would require the department to ~~establish standards to implement this authority~~ *consider designated factors as evidence of good character and rehabilitation in determining whether or not to deny an application for licensure or renewal under these provisions*.

Existing law provides that these provisions do not require a criminal record check of persons employed as consultants.

This bill would, instead, require that persons employed as consultants and acting as direct care staff be subject to the same requirements for criminal record clearance as other direct care staff. The bill would provide that the employing



facility shall not be required to pay any costs associated with the criminal record clearance of these consultants.

Existing law requires the submission of a fingerprint card to the department within 20 days after employment for purposes of obtaining the criminal record check.

This bill would, instead, impose this requirement, upon employment and prior to any contact with clients or residents.

Existing law generally requires the administrator of an intermediate care facility/developmentally disabled-habilitative or an intermediate care facility/developmentally disabled-nursing to be either a licensed nursing home administrator or a qualified mental retardation professional. Violation of these provisions, or willful or repeated violations of related regulations constitutes a crime.

This bill would *extend this provision to apply to the administrator of an intermediate care facility/developmentally disabled.* The bill would require a qualified mental retardation professional, as defined, to complete at least 6 months of administrative training or demonstrate 6 months of experience in an administrative capacity in a licensed health facility, as defined, to qualify as an administrator of an intermediate care facility for the developmentally disabled under ~~that provision~~ *these provisions*. By changing the definition of an existing crime, this bill would impose a state-mandated local program.

Existing law requires the department to deny an application for, or initiate an action to suspend or revoke, a nurse assistant certificate, or deny a training and examination application for a nurse assistant if the applicant or certificate holder has been convicted of specified offenses. *However, if certain conditions exist the department is not required to act pursuant to this provision.*

This bill would ~~delete application of this provision to a training and examination application provide, until August 1, 2001, that the department is not required to act pursuant to this provision with regard to a person who has been convicted of a misdemeanor petty theft or receiving stolen property, is requesting a renewal of their certificate, and has had no subsequent convictions in the last 5 years.~~



Existing law also authorizes the department to deny an application *for*, or deny, suspend, or revoke, a nurse assistant certificate for unprofessional conduct and various crimes.

~~This bill would require the department to establish standards to implement its authority under this provision consider designated factors as evidence of good character and rehabilitation in determining whether or not to deny an application for or deny, suspend, or revoke a nurse assistant certificate under these provisions.~~

Existing law sets forth procedures under which a nurse assistant applicant or certificate holder may request an administrative hearing when the department has determined that an application is to be denied or a certificate is to be denied, suspended, or revoked.

This bill would require that the hearing be conducted within 60 days of the receipt of a written request from the applicant or certificate holder submitted pursuant to existing procedures unless the applicant or certificate holder agrees to an extension.

Existing law requires the applicant for nurse assistant to pay a fee for purposes of a criminal record clearance. Existing law provides that a new nurse assistant applicant who is unemployed and unable to pay the fee may receive a waiver of the payment of the fee for 6 months. The failure to pay the fee within the 6-month period results in the inactivation of the applicant's certification until the fee is paid in full.

This bill would require the department to notify the employer of record when an applicant's certificate has been inactivated under this provision.

Existing law requires that the criminal record clearance provisions for nursing assistant applicants be implemented, commencing July 1, 1998, and phased in, for all renewals of nurse assistant certificates, by June 30, 2000.

~~This bill would require, instead, that these provisions be implemented upon full completion of fingerprint live scan technology by the Department of Justice and phased in for all nurse assistant certificate renewals during the following 2 years. The bill would require the department to develop procedures to ensure that any certified nursing assistants who secure a criminal record clearance through a method other~~



~~than pursuant to these provisions shall not be required to obtain multiple criminal record clearances.~~

This bill would delete these implementation and phasein requirements.

Existing law requires that nurse assistant certificates be renewed every 2 years and provides that these certificates expire on the certificate holder's birthday.

This bill would authorize, until August 1, 2001, the department to extend the expiration of the certified nursing assistant's certification for 60 days under certain circumstances.

Existing law, the California Community Care Facilities Act, provides for the licensure and regulation of community care facilities, including social rehabilitation facilities, by the State Department of Social Services.

Existing law requires the department to secure a criminal record of designated staff members of a community care facility before issuing a license or special permit to operate the facility, except certain staff members of social rehabilitation facilities are exempt from the requirement to be fingerprinted for this purpose.

This bill would delete the exemption of certain staff members of social rehabilitation facilities from the criminal record check requirement. The bill would also specifically provide that any nurse assistant or home health aide meeting the criminal record clearance requirements for employment in facilities licensed by the State Department of Health Services would be deemed to meet existing criminal record clearance requirements for community care facilities.

Existing law authorizes the State Department of Social Services to deny an application for or deny, suspend, or revoke a home health aide certificate for unprofessional conduct and various crimes.

This bill would require the department to consider designated factors as evidence of good character and rehabilitation in determining whether or not to deny an application for or deny, suspend, or revoke a home health aide certificate under these provisions.



Existing law requires the State Department of Social Services to conduct a criminal record clearance for all home health aides.

This bill would require the department to develop procedures to ensure that any licensee, direct care staff, or certificate holder for whom a criminal record clearance has been obtained pursuant to these provisions or provisions governing criminal record clearances for an intermediate care facility developmentally disabled-habilitative, intermediate care facility/developmentally disabled-nursing, or intermediate care facility/developmentally disabled or a nurse assistant shall not be required to obtain multiple criminal record clearances.

Under existing law, a home health aide license expires 12 months from the date of its issuance and existing law requires that the license be renewed annually.

This bill would authorize, until August 1, 2001, the department to extend the expiration of the certified home health aide's certification under certain circumstances.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1265.5 of the Health and Safety
- 2 Code is amended to read:
- 3 1265.5. (a) Prior to the initial licensure or renewal of
- 4 a license of any person or persons to operate or manage
- 5 an intermediate care facility/developmentally disabled
- 6 habilitative, an intermediate care
- 7 facility/developmentally disabled nursing, or an
- 8 intermediate care facility/developmentally disabled,



1 other than an intermediate care
2 facility/developmentally disabled operated by the state
3 that secures criminal record clearances for its employees
4 through a method other than as specified in this section
5 *for that facility* or upon hiring direct *care* staff, the state
6 department shall secure from an appropriate law
7 enforcement agency a criminal record to determine
8 whether the applicant, facility administrator or manager,
9 any direct care staff, or any other adult living in the same
10 location, has ever been convicted of a crime other than
11 a minor traffic violation.

12 (b) (1) The application for licensure or renewal shall
13 be denied if the criminal record indicates that the person
14 seeking initial licensure or renewal of a license referred
15 to in subdivision (a) has been convicted of a violation or
16 attempted violation of any one or more of the following
17 Penal Code provisions: Section 187, subdivision (a) of
18 Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211,
19 220, 222, 243.4, 245, 261, 262, or 264.1, Sections 265 to 267,
20 inclusive, Section 273a, 273d, 273.5, or 285, subdivisions
21 (c), (d), (f), and (g) of Section 286, Section 288,
22 subdivisions (c), (d), (f), and (g) of Section 288a, Section
23 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b,
24 Sections 484d to 484j, inclusive, or Section 487, 488, 496,
25 503, 518, or 666, unless any of the following applies:

26 (A) The person was convicted of a felony and has
27 obtained a certificate of rehabilitation under Chapter 3.5
28 (commencing with Section 4852.01) of Title 6 of Part 3 of
29 the Penal Code and the information or accusation against
30 the person has been dismissed pursuant to Section 1203.4
31 of the Penal Code with regard to that felony.

32 (B) The person was convicted of a misdemeanor and
33 the information or accusation against the person has been
34 dismissed pursuant to Section 1203.4 or 1203.4a of the
35 Penal Code.

36 (C) The person was convicted of a felony or a
37 misdemeanor, but has previously disclosed the fact of
38 each conviction to the department and the department
39 has made a determination in accordance with law that the
40 conviction does not disqualify the person.



1 (D) *The person was convicted of a misdemeanor*
 2 *violation of Section 488 or 496 and has had no subsequent*
 3 *conviction of either offense in the last five years. This*
 4 *paragraph shall become inoperative on August 1, 2001.*

5 (2) The application for licensure or renewal shall be
 6 denied if the criminal record of the person includes a
 7 conviction in another state for an offense that, if
 8 committed or attempted in this state, would have been
 9 punishable as one or more of the offenses set forth in
 10 paragraph (1), unless evidence of rehabilitation
 11 comparable to the dismissal of a misdemeanor or a
 12 certificate of rehabilitation as set forth in subparagraph
 13 (A) or (B) of paragraph (1) is provided to the
 14 department.

15 (c) If the criminal record of a person described in
 16 subdivision (a) indicates any conviction other than a
 17 minor traffic violation or other than a conviction listed in
 18 subdivision (b), the department may deny the
 19 application for licensure or renewal. ~~The department~~
 20 ~~shall establish standards to implement this subdivision~~
 21 ~~that shall specify the situations where department review~~
 22 ~~shall be required. The~~ *In determining whether or not to*
 23 *deny the application for licensure or renewal pursuant to*
 24 *this subdivision, the department shall take into*
 25 *consideration the following factors as evidence of good*
 26 *character and rehabilitation:*

27 (1) The nature and seriousness of the offense under
 28 consideration *and its relationship to their employment*
 29 *duties and responsibilities.*

30 ~~(2) Evidence of conduct subsequent to the offense~~
 31 ~~that suggests responsible or irresponsible character of the~~
 32 ~~person.~~

33 (2) *Activities since conviction, including employment*
 34 *or participation in therapy or education, that would*
 35 *indicate changed behavior.*

36 (3) The time that has elapsed since the commission of
 37 ~~the offense or conduct referred to in paragraph (1) or (2).~~
 38 *the offense and the fact that there is only one or a few*
 39 *offenses under consideration.*



1 (4) The extent to which the person has complied with
2 any terms of parole, probation, restitution, or any other
3 sanction lawfully imposed against the person.

4 (5) Any rehabilitation evidence, *including character*
5 *references*, submitted by the person.

6 (6) *Employment history and current employer*
7 *recommendations.*

8 (7) *Circumstances surrounding the commission of the*
9 *offense that would demonstrate the unlikelihood of*
10 *repetition.*

11 (8) *The granting by the Governor of a full and*
12 *unconditional pardon.*

13 (9) *A certificate of rehabilitation from a superior*
14 *court.*

15 (d) Nothing in this section shall be construed to
16 require a criminal record check of a person receiving
17 services in an intermediate care facility/developmentally
18 disabled habilitative, intermediate care
19 facility/developmentally disabled-nursing, or
20 intermediate care facility/developmentally disabled.

21 (e) For purposes of this section, “direct care staff”
22 means all facility staff who are trained and experienced
23 in the care of persons with developmental disabilities and
24 who directly provide program and nursing services to
25 clients. Administrative and licensed personnel shall be
26 considered direct care staff when directly providing
27 program and nursing services to clients. ~~Nothing in this~~
28 ~~section shall be construed to require criminal record~~
29 ~~checks of persons employed as consultants. Persons~~
30 ~~employed as consultants and acting as direct care staff~~
31 ~~shall be subject to the same requirements for a criminal~~
32 ~~record clearance as other direct care staff. However, the~~
33 ~~employing facility shall not be required to pay any costs~~
34 ~~associated with that criminal record clearance.~~

35 (f) Upon the employment of any person specified in
36 subdivision (a), and prior to any contact with clients or
37 residents, the facility shall submit fingerprint cards to the
38 department for the purpose of obtaining a criminal
39 record check.



1 (g) The department shall develop procedures to
 2 ~~ensure that any direct care staff employed by an~~
 3 ~~intermediate care facility/developmentally disabled~~
 4 ~~habilitative, intermediate care facility/developmentally~~
 5 ~~disabled nursing, or intermediate care~~
 6 ~~facility/developmentally disabled that secures criminal~~
 7 ~~record clearances for its employees through a method~~
 8 ~~other than as specified in this section, shall not be~~
 9 ~~required to obtain a new or additional criminal record~~
 10 ~~clearance upon transferring from one intermediate care~~
 11 ~~facility to another. The procedures shall include~~
 12 ~~utilization of information obtained through the criminal~~
 13 ~~record clearance processes established by Sections 1338.5~~
 14 ~~and 1736.6.~~

15 (h) ~~Any employee cleared by an intermediate care~~
 16 ~~facility prior to the effective date of the amendment to~~
 17 ~~this section enacted in 1998 shall not be subject to the~~
 18 ~~additional clearance requirements specified in this~~
 19 ~~article.~~ *ensure that any licensee, direct care staff, or*
 20 *certificate holder for whom a criminal record has been*
 21 *obtained pursuant to this section or Section 1338.5 or 1736*
 22 *shall not be required to obtain multiple criminal record*
 23 *clearances.*

24 SEC. 2. Section 1276.5 of the Health and Safety Code
 25 is amended to read:

26 1276.5. (a) The department shall adopt regulations
 27 setting forth the minimum number of equivalent nursing
 28 hours per patient required in skilled nursing and
 29 intermediate care facilities, subject to the specific
 30 requirements of Section 14110.7 of the Welfare and
 31 Institutions Code.

32 (b) (1) For the purposes of this section, “nursing
 33 hours” means the number of hours of work performed
 34 per patient day by aides, nursing assistants, or orderlies
 35 plus two times the number of hours worked per patient
 36 day by registered nurses and licensed vocational nurses
 37 (except directors of nursing in facilities of 60 or larger
 38 capacity) and, in the distinct part of facilities and
 39 freestanding facilities providing care for the
 40 developmentally disabled or mentally disordered, by



1 licensed psychiatric technicians who perform direct
2 nursing services for patients in skilled nursing and
3 intermediate care facilities, except when the skilled
4 nursing and intermediate care facility is licensed as a part
5 of a state hospital.

6 (2) Concurrent with implementation of the first year
7 of rates established under the Medi-Cal Long Term Care
8 Reimbursement Act of 1990 (Article 3.8 (commencing
9 with Section 14126) of Chapter 7 of Part 3 of Division 9 of
10 the Welfare and Institutions Code), for the purposes of
11 this section, “nursing hours” means the number of hours
12 of work performed per patient day by aides, nursing
13 assistants, registered nurses, and licensed vocational
14 nurses (except directors of nursing in facilities of 60 or
15 larger capacity) and, in the distinct part of facilities and
16 freestanding facilities providing care for the
17 developmentally disabled or mentally disordered, by
18 licensed psychiatric technicians who performed direct
19 nursing services for patients in skilled nursing and
20 intermediate care facilities, except when the skilled
21 nursing and intermediate care facility is licensed as a part
22 of a state hospital.

23 (c) Notwithstanding Section 1276, the department
24 shall require the utilization of a registered nurse at all
25 times if the department determines that the services of
26 a skilled nursing and intermediate care facility require
27 the utilization of a registered nurse.

28 (d) (1) Except as otherwise provided by law, the
29 administrator of an intermediate care
30 facility/developmentally disabled, intermediate care
31 facility/developmentally disabled habilitative, or an
32 intermediate care facility/developmentally
33 disabled—nursing shall be either a licensed nursing home
34 administrator or a qualified mental retardation
35 professional as defined in Section 483.430 of Title 42 of the
36 Code of Federal Regulations.

37 (2) To qualify as an administrator for an intermediate
38 care facility for the developmentally disabled, a qualified
39 mental retardation professional shall complete at least six
40 months of administrative training or demonstrate six



1 months of experience in an administrative capacity in a
2 licensed health facility, as defined in Section 1250,
3 excluding those facilities specified in subdivisions (e),
4 (h), and (i).

5 SEC. 3. Section 1337.9 of the Health and Safety Code
6 is amended to read:

7 1337.9. (a) (1) *The state department may deny an*
8 *application for, initiate an action to suspend or revoke a*
9 *certificate for, or deny a training and examination*
10 *application for a nurse assistant.*

11 (2) The state department shall *deny a training and*
12 *examination application and* deny, suspend, or revoke a
13 certificate issued under this article if the applicant or
14 certificate holder has been convicted of a violation or
15 attempted violation of any one or more of the following
16 Penal Code provisions: Section 187, subdivision (a) of
17 Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211,
18 220, 222, 243.4, 245, 261, 262, or 264.1, Sections 265 to 267,
19 inclusive, Section 273a, 273d, 273.5, or 285, subdivisions
20 (c), (d), (f), and (g) of Section 286, Section 288,
21 subdivisions (c), (d), (f), and (g) of Section 288a, Section
22 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b,
23 Sections 484d to 484j, inclusive, Section 487, 488, 496, 503,
24 518, or 666, unless any of the following applies:

25 ~~(1)~~

26 (A) The person was convicted of a felony and has
27 obtained a certificate of rehabilitation under Chapter 3.5
28 (commencing with Section 4852.01) of Title 6 of Part 3 of
29 the Penal Code and the information or accusation against
30 him or her has been dismissed pursuant to Section 1203.4
31 of the Penal Code.

32 ~~(2)~~

33 (B) The person was convicted of a misdemeanor and
34 the information or accusation against him or her has been
35 dismissed pursuant to Section 1203.4 or 1203.4a of the
36 Penal Code.

37 ~~(3)~~

38 (C) The certificate holder was convicted of a felony or
39 a misdemeanor, but has previously disclosed the fact of
40 each conviction to the department, and the department



1 has made a determination in accordance with law that the
2 conviction does not disqualify the applicant from
3 certification.

4 *(D) The person was convicted of a misdemeanor*
5 *violation of Section 488 or 496, is requesting a renewal of*
6 *their certificate, and has had no subsequent convictions*
7 *in the last five years. This paragraph shall become*
8 *inoperative on August 1, 2001.*

9 (b) An application or certificate shall be denied,
10 suspended, or revoked upon conviction in another state
11 of an offense that, if committed or attempted in this state,
12 would have been punishable as one or more of the
13 offenses set forth in subdivision (a), unless evidence of
14 rehabilitation comparable to the certificate of
15 rehabilitation or dismissal of a misdemeanor set forth in
16 paragraph (1) or (2) of subdivision (a) is provided.

17 (c) The state department may deny an application or
18 deny, suspend, or revoke a certificate issued under this
19 article for any of the following:

20 (1) Unprofessional conduct, including, but not limited
21 to, incompetence, gross negligence, unless due to
22 circumstances beyond the nurse assistant's control,
23 physical, mental, or verbal abuse of patients, or
24 misappropriation of property of patients or others.

25 (2) Conviction of a crime substantially related to the
26 qualifications, functions, and duties of a certified nurse
27 assistant, irrespective of a subsequent order under
28 Section 1203.4, 1203.4a, or 4852.13 of the Penal Code,
29 where the state department determines that the
30 applicant or certificate holder has not adequately
31 demonstrated that he or she has been rehabilitated and
32 will present a threat to the health, safety, or welfare of
33 patients.

34 (3) Conviction for, or use of, any controlled substance
35 as defined in Division 10 (commencing with Section
36 11000), or any dangerous drug, as defined in Section 4022
37 of the Business and Professions Code, or alcoholic
38 beverages, to an extent or in a manner dangerous or
39 injurious to the certified nurse assistant, any other person,
40 or the public, to the extent that this use would impair the



1 ability to conduct, with safety to the public, the practice
2 authorized by a certificate.

3 (4) Procuring a certified nurse assistant certificate by
4 fraud or misrepresentation or mistake.

5 (5) Making or giving any false statement or
6 information in conjunction with the application for
7 issuance of a nurse assistant certificate or training and
8 examination application.

9 (6) Impersonating any applicant, or acting as proxy for
10 an applicant, in any examination required under this
11 article for the issuance of a certificate.

12 (7) Impersonating another certified nurse assistant, a
13 licensed vocational nurse, or a registered nurse, or
14 permitting or allowing another person to use a certificate
15 for the purpose of providing nursing services.

16 (8) Violating or attempting to violate, directly or
17 indirectly, or assisting in or abetting the violating of, or
18 conspiring to violate any provision or term of, this article.

19 ~~(d) The state department shall establish standards to
20 implement subdivision (c) that shall specify the situations
21 in which department review shall be required. The~~

22 *(d) In determining whether or not to deny the
23 application for licensure or renewal pursuant to
24 subdivision (c), the department shall take into
25 consideration the following factors as evidence of good
26 character and rehabilitation:*

27 (1) The nature and seriousness of the conduct or crime
28 under consideration *and its relationship to their
29 employment duties and responsibilities.*

30 ~~(2) Evidence of conduct subsequent to the conduct or
31 crime that suggests responsible or irresponsible character
32 of the person.~~

33 *(2) Activities since conviction, including employment
34 or participation in therapy or education, that would
35 indicate changed behavior.*

36 (3) The time that has elapsed since the commission of
37 ~~the conduct or crime referred to in paragraph (1) or (2).~~
38 *the offense and the fact that there is only one or a few
39 offenses under consideration.*



1 (4) The extent to which the person has complied with
2 any terms of parole, probation, restitution, or any other
3 sanction lawfully imposed against the person.

4 (5) Any rehabilitation evidence, *including character*
5 *references*, submitted by the person.

6 (6) *Employment history and current employer*
7 *recommendations*.

8 (7) *Circumstances surrounding the commission of the*
9 *offense that would demonstrate the unlikelihood of*
10 *repetition*.

11 (8) *The granting by the Governor of a full and*
12 *unconditional pardon*.

13 (9) *A certificate of rehabilitation from a superior*
14 *court*.

15 (e) When the state department determines that a
16 certificate shall be suspended, the state department shall
17 specify the period of actual suspension. The state
18 department may determine that the suspension shall be
19 stayed, placing the certificate holder on probation with
20 specified conditions for a period not to exceed two years.
21 When the state department determines that probation is
22 the appropriate action, the certificate holder shall be
23 notified that in lieu of the state department proceeding
24 with a formal action to suspend the certification and in
25 lieu of an appeal pursuant to subdivision (h), the
26 certificate holder may request to enter into a diversion
27 program agreement. A diversion program agreement
28 shall specify terms and conditions related to matters,
29 including, but not limited to, work performance,
30 rehabilitation, training, counseling, progress reports, and
31 treatment programs. If a certificate holder successfully
32 completes a diversion program, no action shall be taken
33 upon the allegations that were the basis for the diversion
34 agreement. Upon failure of the certificate holder to
35 comply with the terms and conditions of an agreement,
36 the state department may proceed with a formal action
37 to suspend or revoke the certification.

38 (f) A plea or verdict of guilty, or a conviction following
39 a plea of nolo contendere shall be deemed a conviction
40 within the meaning of this article. The state department



1 may deny an application or deny, suspend, or revoke a
2 certification based on a conviction as provided in this
3 article when the judgment of conviction is entered or
4 when an order granting probation is made suspending
5 the imposition of sentence.

6 (g) Upon determination to deny an application or
7 deny, revoke, or suspend a certificate, the state
8 department shall notify the applicant or certificate
9 holder in writing by certified mail of all of the following:

10 (1) The reasons for the determination.

11 (2) The applicant's or certificate holder's right to
12 appeal the determination if the determination was made
13 under subdivision (c).

14 (h) (1) Upon written notification that the state
15 department has determined that an application shall be
16 denied or a certificate shall be denied, suspended, or
17 revoked under subdivision (c), the applicant or
18 certificate holder may request an administrative hearing
19 by submitting a written request to the state department
20 within 20 business days of receipt of the written
21 notification. Upon receipt of a written request, the state
22 department shall hold an administrative hearing
23 pursuant to the procedures specified in Section 100171,
24 except where those procedures are inconsistent with this
25 section.

26 (2) A hearing under this section shall be conducted
27 *within 60 days of the receipt of the written request of the*
28 *applicant or certificate holder submitted pursuant to*
29 *paragraph (1)* by a hearing officer or administrative law
30 judge designated by the director at a location, other than
31 the work facility, convenient to the applicant or
32 certificate holder *unless the applicant or certificate*
33 *holder agrees to an extension*. The hearing shall be tape
34 recorded and a written decision shall be sent by certified
35 mail to the applicant or certificate holder within 30
36 calendar days of the hearing. Except as specified in
37 subdivision (i), the effective date of an action to revoke
38 or suspend a certificate shall be specified in the written
39 decision, or if no administrative hearing is timely
40 requested, the effective date shall be 21 business days



1 from written notification of the department's
2 determination to revoke or suspend.

3 (i) The state department may revoke or suspend a
4 certificate prior to any hearing when immediate action is
5 necessary in the judgment of the director to protect the
6 public welfare. Notice of this action, including a
7 statement of the necessity of immediate action to protect
8 the public welfare, shall be sent in accordance with
9 subdivision (g). If the certificate holder requests an
10 administrative hearing pursuant to subdivision (h), the
11 state department shall hold the administrative hearing as
12 soon as possible but not later than 30 calendar days from
13 receipt of the request for a hearing. A written hearing
14 decision upholding or setting aside the action shall be sent
15 by certified mail to the certificate holder within 30
16 calendar days of the hearing.

17 (j) Upon the expiration of the term of suspension, he
18 or she shall be reinstated by the state department and
19 shall be entitled to resume practice unless it is established
20 to the satisfaction of the state department that the person
21 has practiced as a certified nurse assistant in this state
22 during the term of suspension. In this event, the state
23 department shall revoke the person's certificate.

24 (k) Upon a determination to deny an application or
25 deny, revoke, or suspend a certificate, the state
26 department shall notify the employer of the applicant
27 and certificate holder in writing of that determination,
28 and whether the determination is final, or whether a
29 hearing is pending relating to this determination. If a
30 licensee or facility is required to deny employment or
31 terminate employment of the employee based upon
32 notice from the state that the employee is determined to
33 be unsuitable for employment under this section, the
34 licensee or facility shall not incur criminal, civil,
35 unemployment insurance, workers' compensation, or
36 administrative liability as a result of that denial or
37 termination.

38 SEC. 4. Section 1338.5 of the Health and Safety Code
39 is amended to read:



1 1338.5. (a) (1) A criminal record clearance shall be
2 conducted for all nurse assistants by the submission of
3 fingerprint cards to the state department for processing
4 at the Department of Justice. This criminal record
5 clearance shall be completed prior to issuing or renewing
6 a certificate. Applicants shall be responsible for any costs
7 associated with rolling the fingerprint cards. The fee to
8 cover the processing costs of the Department of Justice,
9 not including the costs associated with rolling the
10 fingerprint cards, shall not exceed thirty-two dollars
11 (\$32) per card.

12 (2) (A) Upon enrollment in a training program for
13 nurse assistant certification, and prior to direct contact
14 with residents, a candidate for training shall submit a
15 training and examination application and the fingerprint
16 cards to the state department to receive a criminal record
17 review through the Department of Justice. Submission of
18 the fingerprints to the Federal Bureau of Investigation
19 shall be at the discretion of the state department.

20 (B) New nurse assistant applicants who are
21 unemployed and unable to pay the fee charged by the
22 Department of Justice pursuant to paragraph (1) of
23 subdivision (a) due to financial hardship may request a
24 waiver for a period not to exceed six months. The request
25 for waiver shall be made in writing at the time the
26 fingerprint card is submitted for processing. The
27 applicant shall agree to pay the fee within six months of
28 employment. The failure to pay the fee within the
29 six-month period shall result in the inactivation of the
30 applicant's certificate until the fee is paid in full. The state
31 department shall notify the employer of record when an
32 applicant's certificate has been inactivated under this
33 subparagraph.

34 (b) Upon receipt of the fingerprints, the Department
35 of Justice shall notify the state department of the criminal
36 record information, as provided for in this subdivision. If
37 no criminal record information has been recorded, the
38 Department of Justice shall provide the state department
39 with a statement of that fact. If the fingerprints are
40 illegible, the Department of Justice shall, within 15



1 calendar days from receipt of the fingerprints, notify the
2 state department of that fact.

3 (c) The department shall respond to the applicant and
4 employer within 30 days from the date of receipt of the
5 fingerprint cards.

6 ~~(d) A criminal record clearance, consistent with this
7 section shall be implemented for nursing assistant
8 applicants upon full completion of fingerprint live-scan
9 technology by the Department of Justice, and phased in
10 for all certificate renewals during the following two years.~~

11 ~~(e)~~
12 (d) The use of fingerprint live-scan technology
13 implemented by the Department of Justice by the year
14 1999 shall be used by the Department of Justice to
15 generate timely and accurate positive fingerprint
16 identification prior to nurse assistant certification.

17 ~~(f)~~
18 (e) The state department shall develop procedures to
19 ensure that any certified nursing assistant that secures a
20 criminal record clearance through a method other than
21 as specified in this section, shall not be required to obtain
22 a new or additional criminal record clearance upon
23 transferring from one intermediate care facility to
24 another. The procedures shall include utilization of
25 information obtained through the criminal record
26 clearance processes established by Sections 1265.5 and
27 1736.6. *ensure that any licensee, direct care staff, or
28 certificate holder for whom a criminal record has been
29 obtained pursuant to this section or Section 1265.5 or 1736
30 shall not be required to obtain multiple criminal record
31 clearances.*

32 (f) *If the department receives a fingerprint card from
33 a certified nursing assistant 60 days prior to the expiration
34 of the certified nursing assistant's certification and the
35 department has received no response from the
36 Department of Justice, or if the department is
37 experiencing a delay in processing the renewal of the
38 certified nursing assistant's certification at the time of the
39 expiration of the certified nursing assistant's certification,
40 the department may extend the expiration of the*



1 *certified nursing assistant's certification for 60 days. This*
2 *provision shall expire August 1, 2001.*

3 SEC. 5. Section 1522 of the Health and Safety Code is
4 amended to read:

5 1522. The Legislature recognizes the need to
6 generate timely and accurate positive fingerprint
7 identification of applicants as a condition of issuing
8 licenses, permits, or certificates of approval for persons to
9 operate or provide direct care services in a community
10 care facility, foster family home, or a certified family
11 home. Therefore, the Legislature supports the use of the
12 fingerprint live-scan technology, as identified in the
13 long-range plan of the Department of Justice for fully
14 automating the processing of fingerprints and other data
15 by the year 1999, otherwise known as the California
16 Crime Information Intelligence System (CAL-CII), to be
17 used for applicant fingerprints. It is the intent of the
18 Legislature in enacting this section to require the
19 fingerprints of those individuals whose contact with
20 community care clients may pose a risk to the clients'
21 health and safety.

22 (a) Before issuing a license or special permit to any
23 person or persons to operate or manage a community
24 care facility, the State Department of Social Services shall
25 secure from an appropriate law enforcement agency a
26 criminal record to determine whether the applicant or
27 any other person specified in subdivision (b) has ever
28 been convicted of a crime other than a minor traffic
29 violation or arrested for any crime specified in Section 290
30 of the Penal Code, for violating Section 245 or 273.5,
31 subdivision (b) of Section 273a or, prior to January 1, 1994,
32 paragraph (2) of Section 273a of the Penal Code, or for
33 any crime for which the department cannot grant an
34 exemption if the person was convicted and the person has
35 not been exonerated. That criminal history information
36 shall include the full criminal record, of any of those
37 persons, and subsequent arrest information pursuant to
38 Section 11105.2 of the Penal Code. No fee shall be charged
39 by the Department of Justice or the State Department of
40 Social Services for the fingerprinting of an applicant for



1 a license or special permit to operate a facility providing
2 nonmedical board, room, and care for six or less children
3 or for obtaining a criminal record of the applicant
4 pursuant to this section. The following shall apply to the
5 criminal record information:

6 (1) If the State Department of Social Services finds
7 that the applicant, or any other person specified in
8 subdivision (b), has been convicted of a crime other than
9 a minor traffic violation, the application shall be denied,
10 unless the director grants an exemption pursuant to
11 subdivision (g).

12 (2) If the State Department of Social Services finds
13 that the applicant, or any person specified in subdivision
14 (b) is awaiting trial for a crime other than a minor traffic
15 violation, the State Department of Social Services shall
16 cease processing the application until the conclusion of
17 the trial.

18 (3) If no criminal record information has been
19 recorded, the Department of Justice shall provide the
20 applicant and the State Department of Social Services
21 with a statement of that fact.

22 (4) If the State Department of Social Services finds
23 after licensure that the licensee, or any other person
24 specified in paragraph (2) of subdivision (b), has been
25 convicted of a crime other than a minor traffic violation,
26 the license may be revoked, unless the director grants an
27 exemption pursuant to subdivision (g).

28 (b) In addition to the applicant, this section shall be
29 applicable to criminal convictions of the following
30 persons:

31 (1) Adults responsible for administration or direct
32 supervision of staff.

33 (2) Any person, other than a client, residing in the
34 facility.

35 (3) Any person who provides client assistance in
36 dressing, grooming, bathing, or personal hygiene. *Any*
37 *nurse assistant or home health aide meeting the*
38 *requirements of Section 1338.5 or 1736.6, respectively,*
39 *who is not employed, retained, or contracted by the*
40 *licensee, and who has been certified or recertified on or*



1 after July 1, 1998, shall be deemed to meet the criminal
2 record clearance requirements of this section. A certified
3 nurse assistant and certified home health aide who will be
4 providing client assistance and who falls under this
5 exception shall provide one copy of his or her
6 certification, prior to providing care, to the adult
7 community care facility. The facility shall maintain the
8 copy of the certification on file as long as care is being
9 provided by the certified nurse assistant or certified home
10 health aide at the facility. Nothing in this paragraph
11 restricts the right of the department to exclude a certified
12 nurse assistant or certified home health aide from a
13 licensed community care facility pursuant to Section
14 1558.

15 (4) Any staff person or employee who has frequent
16 and routine contact with the clients. In determining who
17 has frequent contact, any volunteer who is in the facility
18 shall be exempt unless the volunteer is used to replace or
19 supplement staff in providing direct care and supervision
20 of clients. In determining who has routine contact, staff
21 and employees under direct onsite supervision and who
22 are not providing direct care and supervision or who have
23 only occasional or intermittent contact with clients shall
24 be exempt.

25 (5) If the applicant is a firm, partnership, association,
26 or corporation, the chief executive officer or other person
27 serving in like capacity.

28 (6) Additional officers of the governing body of the
29 applicant, or other persons with a financial interest in the
30 applicant, as determined necessary by the department by
31 regulation. The criteria used in the development of these
32 regulations shall be based on the person's capability to
33 exercise substantial influence over the operation of the
34 facility.

35 (c) (1) Subsequent to initial licensure, any person
36 specified in subdivision (b) and not exempted from
37 fingerprinting shall, as a condition to employment,
38 residence, or presence in a community care facility, be
39 fingerprinted and sign a declaration under penalty of
40 perjury regarding any prior criminal convictions. The



1 licensee shall submit these fingerprints to the
2 Department of Justice not later than four calendar days
3 following employment, residence, or initial presence in
4 the community care facility. These fingerprints shall be
5 on a card provided by the State Department of Social
6 Services for the purpose of obtaining a permanent set of
7 fingerprints. Fingerprints not submitted to the
8 Department of Justice, as required in this section, shall
9 result in the citation of a deficiency and the fingerprints
10 shall then be submitted to the State Department of Social
11 Services for processing. Upon request of the licensee, who
12 shall enclose a self-addressed stamped postcard for this
13 purpose, the Department of Justice shall verify receipt of
14 the fingerprints.

15 (2) Within 30 calendar days of the receipt of the
16 fingerprints, the Department of Justice shall notify the
17 State Department of Social Services of the criminal
18 record information, as provided for in subdivision (a). If
19 no criminal record information has been recorded, the
20 Department of Justice shall provide the licensee and the
21 State Department of Social Services with a statement of
22 that fact within 15 calendar days of receipt of the
23 fingerprints. If new fingerprints are required for
24 processing, the Department of Justice shall, within 15
25 calendar days from the date of receipt of the fingerprints,
26 notify the licensee that the fingerprints were illegible.

27 (3) Except for persons specified in paragraph (2) of
28 subdivision (b), the licensee shall endeavor to ascertain
29 the previous employment history of persons required to
30 be fingerprinted under this subdivision. If it is
31 determined by the State Department of Social Services,
32 on the basis of the fingerprints submitted to the
33 Department of Justice, that the person has been
34 convicted of, or is awaiting trial for, a sex offense against
35 a minor, or has been convicted for an offense specified in
36 Section 243.4, 273a, or 273d or subdivision (a) or (b) of
37 Section 368 of the Penal Code, or a felony, the State
38 Department of Social Services shall notify the licensee to
39 act immediately to terminate the person's employment,
40 remove the person from the community care facility, or



1 bar the person from entering the community care facility.
2 The State Department of Social Services may
3 subsequently grant an exemption pursuant to subdivision
4 (g). If the conviction or arrest was for another crime,
5 except a minor traffic violation, the licensee shall, upon
6 notification by the State Department of Social Services,
7 act immediately to either (1) terminate the person's
8 employment, remove the person from the community
9 care facility, or bar the person from entering the
10 community care facility; or (2) seek an exemption
11 pursuant to subdivision (g). The State Department of
12 Social Services shall determine if the person shall be
13 allowed to remain in the facility until a decision on the
14 exemption is rendered. A licensee's failure to comply
15 with the department's prohibition of employment,
16 contact with clients, or presence in the facility as required
17 by this paragraph shall be grounds for disciplining the
18 licensee pursuant to Section 1550.

19 (4) The department may issue an exemption on its
20 own motion pursuant to subdivision (g) if the person's
21 criminal history indicates that the person is of good
22 character based on the age, seriousness, and frequency of
23 the conviction or convictions. The department, in
24 consultation with interested parties, shall develop
25 regulation to establish the criteria to grant an exemption
26 pursuant to this paragraph.

27 (5) Concurrently with notifying the licensee pursuant
28 to paragraph (3), the department shall notify the affected
29 individual of his or her right to seek an exemption
30 pursuant to subdivision (g). The individual may seek an
31 exemption only if the licensee terminates the person's
32 employment or removes the person from the facility after
33 receiving notice from the department pursuant to
34 paragraph (3).

35 (d) (1) Before issuing a license, special permit, or
36 certificate of approval to any person or persons to operate
37 or manage a foster family home or certified family home
38 as described in Section 1506, the State Department of
39 Social Services or other approving authority shall secure
40 from an appropriate law enforcement agency a criminal



1 record to determine whether the applicant or any person
2 specified in subdivision (b) has ever been convicted of a
3 crime other than a minor traffic violation or arrested for
4 any crime specified in Section 290 of the Penal Code or
5 arrested for violating Section 245 or 273.5, subdivision (b)
6 of Section 273a or, prior to January 1, 1994, paragraph (2)
7 of Section 273a of the Penal Code, or for any crime for
8 which the department cannot grant an exemption if the
9 person was convicted and the person has not been
10 exonerated. That criminal history information shall
11 include the full criminal record, if any, of those persons.
12 No fee shall be charged by the Department of Justice or
13 the State Department of Social Services for the
14 fingerprinting of an applicant for a license, special
15 permit, or certificate of approval described in this
16 subdivision. The record, if any, shall be taken into
17 consideration when evaluating a prospective applicant.
18 The following shall apply to the criminal record
19 information:

20 (A) If the applicant or other persons specified in
21 subdivision (b) have convictions that would make the
22 applicant's home unfit as a foster family home or a
23 certified family home, the license, special permit, or
24 certificate of approval shall be denied.

25 (B) If the State Department of Social Services finds
26 that the applicant, or any person specified in subdivision
27 (b) is awaiting trial for a crime other than a minor traffic
28 violation, the State Department of Social Services or
29 other approving authority shall cease processing the
30 application until the conclusion of the trial.

31 (C) For the purposes of this subdivision, a criminal
32 record clearance provided under Section 8712 of the
33 Family Code may be used by the department or other
34 approving agency.

35 (2) Any person specified in this subdivision shall, as a
36 part of the application, be fingerprinted and sign a
37 declaration under penalty of perjury regarding any prior
38 criminal convictions or arrests for any crime against a
39 child, spousal or cohabitant abuse or, any crime for which
40 the department cannot grant an exemption if the person



1 was convicted and shall submit these fingerprints to the
2 licensing agency or other approving authority.

3 (3) The foster family agency shall obtain fingerprints
4 from certified home applicants and from persons
5 specified in subdivision (b) and shall submit them
6 directly to the Department of Justice. Within five
7 working days of the receipt of the criminal record or
8 information regarding criminal convictions from the
9 Department of Justice, the department shall notify the
10 applicant of any criminal arrests or convictions. If no
11 arrests or convictions are recorded, the Department of
12 Justice shall provide the foster family agency with a
13 statement of that fact concurrent with providing the
14 information to the State Department of Social Services.

15 (4) If the State Department of Social Services finds
16 that the applicant, or any other person specified in
17 subdivision (b), has been convicted of a crime other than
18 a minor traffic violation, the application shall be denied,
19 unless the director grants an exemption pursuant to
20 subdivision (g).

21 (5) If the State Department of Social Services finds
22 after licensure or the granting of the certificate of
23 approval that the licensee, certified foster parent, or any
24 other person specified in paragraph (2) of subdivision
25 (b), has been convicted of a crime other than a minor
26 traffic violation, the license or certificate of approval may
27 be revoked by the department or the foster family
28 agency, whichever is applicable, unless the director
29 grants an exemption pursuant to subdivision (g). A
30 licensee's failure to comply with the department's
31 prohibition of employment, contact with clients, or
32 presence in the facility as required by paragraph (3) of
33 subdivision (c) shall be grounds for disciplining the
34 licensee pursuant to Section 1550.

35 (e) The State Department of Social Services shall not
36 use a record of arrest to deny, revoke, or terminate any
37 application, license, employment, or residence unless the
38 department investigates the incident and secures
39 evidence, whether or not related to the incident of arrest,
40 that is admissible in an administrative hearing to establish



1 conduct by the person that may pose a risk to the health
2 and safety of any person who is or may become a client.
3 The State Department of Social Services is authorized to
4 obtain any arrest or conviction records or reports from
5 any law enforcement agency as necessary to the
6 performance of its duties to inspect, license, and
7 investigate community care facilities and individuals
8 associated with a community care facility.

9 (f) For purposes of this section or any other provision
10 of this chapter, a conviction means a plea or verdict of
11 guilty or a conviction following a plea of nolo contendere.
12 Any action which the State Department of Social Services
13 is permitted to take following the establishment of a
14 conviction may be taken when the time for appeal has
15 elapsed, or the judgment of conviction has been affirmed
16 on appeal or when an order granting probation is made
17 suspending the imposition of sentence, notwithstanding
18 a subsequent order pursuant to Sections 1203.4 and
19 1203.4a of the Penal Code permitting the person to
20 withdraw his or her plea of guilty and to enter a plea of
21 not guilty, or setting aside the verdict of guilty, or
22 dismissing the accusation, information, or indictment.
23 For purposes of this section or any other provision of this
24 chapter, the record of a conviction, or a copy thereof
25 certified by the clerk of the court or by a judge of the
26 court in which the conviction occurred, shall be
27 conclusive evidence of the conviction. For purposes of
28 this section or any other provision of this chapter, the
29 arrest disposition report certified by the Department of
30 Justice, or documents admissible in a criminal action
31 pursuant to Section 969b of the Penal Code, shall be prima
32 facie evidence of the conviction, notwithstanding any
33 other provision of law prohibiting the admission of these
34 documents in a civil or administrative action.

35 (g) (1) After review of the record, the director may
36 grant an exemption from disqualification for a license or
37 special permit as specified in paragraphs (1) and (4) of
38 subdivision (a), or for a license, special permit, or
39 certificate of approval as specified in paragraphs (4) and
40 (5) of subdivision (d), or for employment, residence, or



1 presence in a community care facility as specified in
2 paragraphs (3), (4), and (5) of subdivision (c), if the
3 director has substantial and convincing evidence to
4 support a reasonable belief that the applicant and the
5 person convicted of the crime, if other than the applicant,
6 are of such good character as to justify issuance of the
7 license or special permit or granting an exemption for
8 purposes of subdivision (c). Except as otherwise provided
9 in this subdivision, no exemption shall be granted
10 pursuant to this subdivision if the conviction was for an
11 offense specified in Section 220, 243.4, or 264.1,
12 subdivision (a) of Section 273a or, prior to January 1, 1994,
13 paragraph (1) of Section 273a, Section 273d, 288, or 289,
14 subdivision (a) of Section 290, or subdivision (a) or (b) of
15 Section 368 of the Penal Code, or was a conviction of
16 another crime against an individual specified in
17 subdivision (c) of Section 667.5 of the Penal Code. The
18 director may grant an exemption if the employee or
19 prospective employee, who was convicted of a crime
20 against an individual prescribed in paragraph (1), (2),
21 (7), or (8) of subdivision (c) of Section 667.5 of the Penal
22 Code, has been rehabilitated as provided in Section
23 4852.03 of the Penal Code, has maintained the conduct
24 required in Section 4852.05 of the Penal Code for at least
25 10 years, and has the recommendation of the district
26 attorney representing the employee's county of
27 residence, or if the employee or prospective employee
28 has received a certificate of rehabilitation pursuant to
29 Chapter 3.5 (commencing with Section 4852.01) of Title
30 6 of Part 3 of the Penal Code.

31 (2) The department shall not prohibit a person from
32 being employed or having contact with clients in a facility
33 on the basis of a denied criminal record exemption
34 request or arrest information unless the department
35 complies with the requirements of Section 1558.

36 (h) (1) For purposes of compliance with this section,
37 the department may permit an individual to transfer a
38 current criminal records clearance, as defined in
39 subdivision (a), from one facility to another, as long as the
40 criminal record clearance has been processed through a



1 state licensing district office, and is being transferred to
2 another state licensing district office.

3 (2) The State Department of Social Services shall hold
4 criminal record clearances in its active files for a
5 minimum of two years after an employee is no longer
6 employed at a licensed facility in order for the criminal
7 record clearance to be transferred.

8 (i) The full criminal record obtained for purposes of
9 this section may be used by the department or by a
10 licensed adoption agency as a clearance required for
11 adoption purposes.

12 (j) If a licensee or facility is required by law to deny
13 employment or to terminate employment of any
14 employee based on written notification from the state
15 department that the employee has a prior criminal
16 conviction or is determined unsuitable for employment
17 under Section 1558, the licensee or facility shall not incur
18 civil liability or unemployment insurance liability as a
19 result of that denial or termination.

20 (k) (1) In order to expedite the current criminal
21 record clearance and fingerprint process of the
22 Department of Justice pursuant to subdivisions (a) and
23 (c), the Department of Justice shall complete work on all
24 of its current backlog of criminal records clearances for
25 community care facilities licensed by the State
26 Department of Social Services by July 1, 1995.

27 (2) Effective January 1, 1995, the Department of
28 Justice shall complete all new requests for criminal record
29 clearances for community care facilities within 30 days of
30 receipt.

31 (3) The Department of Justice shall coordinate with
32 the State Department of Social Services to establish and
33 implement an automated live-scan processing system for
34 fingerprints in two district offices of the Community Care
35 Licensing Division of the State Department of Social
36 Services by July 1, 1995. These live-scan processing units
37 shall be connected to the main system at the Department
38 of Justice by July 1, 1996, and shall become part of that
39 department's pilot project in accordance with its
40 long-range plan. The State Department of Social Services



1 may charge a fee not to exceed five dollars (\$5) or the
2 actual cost of processing a set of live-scan fingerprints.

3 (4) The Department of Justice shall provide a report
4 to the Assembly Human Services Committee and to the
5 Senate Health and Human Services Committee by July
6 15, 1995, regarding the completion of backlogged
7 criminal record clearance requests pursuant to
8 paragraph (1) and the progress on implementing the
9 automated live-scan processing system in the two district
10 offices pursuant to paragraph (3). The Department of
11 Justice shall provide a report to the Assembly Human
12 Services Committee and to the Senate Health and
13 Human Services Committee by April 15, 1996, regarding
14 the progress of the implementation of the statewide
15 CAL-CII system; the number of requests for criminal
16 clearances received pursuant to this section during the
17 previous year; the number of criminal record clearances
18 requested and completed pursuant to this section within
19 a 17-day “expedite” period or within the 30-day period
20 required by paragraph (2); and the number of requests
21 and reasons for delays beyond the 30-day period.

22 SEC. 6. *Section 1736.5 of the Health and Safety Code*
23 *is amended to read:*

24 1736.5. (a) The state department shall deny a
25 training application and deny, suspend, or revoke a
26 certificate issued under this article if the applicant or
27 certificate holder has been convicted of a violation or
28 attempted violation of any of the following Penal Code
29 provisions: Section 187, subdivision (a) of Section 192,
30 Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222,
31 243.4, 245, 261, 262, or 264.1, Sections 265 to 267, inclusive,
32 Section 273a, 273d, 273.5, or 285, subdivisions (c), (d), (f),
33 and (g) of Section 286, Section 288, subdivisions (c), (d),
34 (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368,
35 451, 459, 470, 475, 484, or 484b, Sections 484d to 484j,
36 inclusive, Section 487, 488, 496, 503, 518, or 666, unless any
37 of the following apply:

38 (1) The person was convicted of a felony and has
39 obtained a certificate of rehabilitation under Chapter 3.5
40 (commencing with Section 4852.01) of Title 6 of the Penal



1 Code and the information or accusation against him or
2 her has been dismissed pursuant to Section 1203.4 of the
3 Penal Code.

4 (2) The person was convicted of a misdemeanor and
5 the information or accusation against him or her has been
6 dismissed pursuant to Section 1203.4 or 1203.4a of the
7 Penal Code.

8 (3) The certificate holder was convicted of a felony or
9 a misdemeanor, but has previously disclosed the fact of
10 each conviction to the department, and the department
11 has made a determination in accordance with law that the
12 conviction does not disqualify the applicant from
13 certification.

14 (b) An application or certificate shall be denied,
15 suspended, or revoked upon conviction in another state
16 of an offense that, if committed or attempted in this state,
17 would have been punishable as one or more of the
18 offenses set forth in subdivision (a), unless evidence of
19 rehabilitation comparable to the certificate of
20 rehabilitation or dismissal of a misdemeanor set forth in
21 paragraph (1) or (2) of subdivision (a) is provided.

22 (c) (1) The state department may deny an
23 application or deny, suspend, or revoke a certificate
24 issued under this article for any of the following:

25 ~~(1)~~

26 (A) Unprofessional conduct, including, but not limited
27 to, incompetence, gross negligence, physical, mental, or
28 verbal abuse of patients, or misappropriation of property
29 of patients or others.

30 ~~(2)~~

31 (B) Conviction of a crime substantially related to the
32 qualifications, functions, and duties of a home health aide,
33 irrespective of a subsequent order under Section 1203.4,
34 1203.4a, or 4852.13 of the Penal Code, where the state
35 department determines that the applicant or certificate
36 holder has not adequately demonstrated that he or she
37 has been rehabilitated and will present a threat to the
38 health, safety, or welfare of patients.

39 ~~(3)~~



1 (C) Conviction for, or use of, any controlled substance
2 as defined in Division 10 (commencing with Section
3 11000), or any dangerous drug, as defined in Section 4022
4 of the Business and Professions Code, or alcoholic
5 beverages, to an extent or in a manner dangerous or
6 injurious to the home health aide, any other person, or the
7 public, to the extent that this use would impair the ability
8 to conduct, with safety to the public, the practice
9 authorized by a certificate.

10 ~~(4)~~

11 (D) Procuring a home health aide certificate by fraud,
12 misrepresentation, or mistake.

13 ~~(5)~~

14 (E) Making or giving any false statement or
15 information in conjunction with the application for
16 issuance of a home health aide certificate or training and
17 examination application.

18 ~~(6)~~

19 (F) Impersonating any applicant, or acting as proxy
20 for an applicant, in any examination required under this
21 article for the issuance of a certificate.

22 ~~(7)~~

23 (G) Impersonating another home health aide, a
24 licensed vocational nurse, or a registered nurse, or
25 permitting or allowing another person to use a certificate
26 for the purpose of providing nursing services.

27 ~~(8)~~

28 (H) Violating or attempting to violate, directly or
29 indirectly, or assisting in or abetting the violation of, or
30 conspiring to violate any provision or term of, this article.

31 (2) *In determining whether or not to deny an
32 application or deny, suspend, or revoke a certificate
33 issued under this article pursuant to this subdivision, the
34 department shall take into consideration the following
35 factors as evidence of good character and rehabilitation:*

36 (A) *The nature and seriousness of the offense under
37 consideration and its relationship to their employment
38 duties and responsibilities.*



1 (B) Activities since conviction, including employment
2 or participation in therapy or education, that would
3 indicate changed behavior.

4 (C) The time that has elapsed since the commission of
5 the offense and the fact that there is only one or a few
6 offenses under consideration.

7 (D) The extent to which the person has complied with
8 any terms of parole, probation, restitution, or any other
9 sanction lawfully imposed against the person.

10 (E) Any rehabilitation evidence, including character
11 references, submitted by the person.

12 (F) Employment history and current employer
13 recommendations.

14 (G) Circumstances surrounding the commission of the
15 offense that would demonstrate the unlikelihood of
16 repetition.

17 (H) Granting by the Governor of a full and
18 unconditional pardon.

19 (I) A certificate of rehabilitation from a superior court.

20 (d) When the state department determines that a
21 certificate shall be suspended, the state department shall
22 specify the period of actual suspension. The state
23 department may determine that the suspension shall be
24 stayed, placing the certificate holder on probation with
25 specified conditions for a period not to exceed two years.
26 When the state department determines that probation is
27 the appropriate action, the certificate holder shall be
28 notified that in lieu of the state department proceeding
29 with a formal action to suspend the certification and in
30 lieu of an appeal pursuant to subdivision (g), the
31 certificate holder may request to enter into a diversion
32 program agreement. A diversion program agreement
33 shall specify terms and conditions related to matters,
34 including, but not limited to, work performance,
35 rehabilitation, training, counseling, progress reports, and
36 treatment programs. If a certificate holder successfully
37 completes a diversion program, no action shall be taken
38 upon the allegations that were the basis for the diversion
39 agreement. Upon failure of the certificate holder to
40 comply with the terms and conditions of an agreement,



1 the state department may proceed with a formal action
2 to suspend or revoke the certification.

3 (e) A plea or verdict of guilty, or a conviction following
4 a plea of nolo contendere, shall be deemed a conviction
5 within the meaning of this article. The state department
6 may deny an application or deny, suspend, or revoke a
7 certification based on a conviction as provided in this
8 article when the judgment of conviction is entered or
9 when an order granting probation is made suspending
10 the imposition of sentence.

11 (f) Upon determination to deny an application or
12 deny, revoke, or suspend a certificate, the state
13 department shall notify the applicant or certificate
14 holder in writing by certified mail of all of the following:

15 (1) The reasons for the determination.

16 (2) The applicant's or certificate holder's right to
17 appeal the determination if the determination was made
18 under subdivision (c).

19 (g) (1) Upon written notification that the state
20 department has determined that an application shall be
21 denied or a certificate shall be denied, suspended, or
22 revoked under subdivision (c), the applicant or
23 certificate holder may request an administrative hearing
24 by submitting a written request to the state department
25 within 20 business days of receipt of the written
26 notification. Upon receipt of a written request, the state
27 department shall hold an administrative hearing
28 pursuant to the procedures specified in Section 100171,
29 except where those procedures are inconsistent with this
30 section.

31 (2) A hearing under this section shall be conducted by
32 a hearing officer or administrative law judge designated
33 by the director at a location other than the work facility
34 convenient to the applicant or certificate holder. The
35 hearing shall be tape recorded and a written decision
36 shall be sent by certified mail to the applicant or
37 certificate holder within 30 calendar days of the hearing.
38 Except as specified in subdivision (h), the effective date
39 of an action to revoke or suspend a certificate shall be
40 specified in the written decision, or if no administrative



1 hearing is timely requested, the effective date shall be 21
2 business days from written notification of the
3 department's determination to revoke or suspend.

4 (h) The state department may revoke or suspend a
5 certificate prior to any hearing when immediate action is
6 necessary in the judgment of the director to protect the
7 public welfare. Notice of this action, including a
8 statement of the necessity of immediate action to protect
9 the public welfare, shall be sent in accordance with
10 subdivision (f). If the certificate holder requests an
11 administrative hearing pursuant to subdivision (g), the
12 state department shall hold the administrative hearing as
13 soon as possible but not later than 30 calendar days from
14 receipt of the request for a hearing. A written hearing
15 decision upholding or setting aside the action shall be sent
16 by certified mail to the certificate holder within 30
17 calendar days of the hearing.

18 (i) Upon the expiration of the term of suspension, he
19 or she shall be reinstated by the state department and
20 shall be entitled to resume practice unless it is established
21 to the satisfaction of the state department that the person
22 has practiced as a home health aide in California during
23 the term of suspension. In this event, the state
24 department shall revoke the person's certificate.

25 (j) Upon a determination to deny an application or
26 deny, revoke, or suspend a certificate, the department
27 shall notify the employer of the applicant or certificate
28 holder in writing of that determination, and whether the
29 determination is final, or whether a hearing is pending
30 relating to this determination. If a licensee or facility is
31 required to deny employment or terminate employment
32 of the employee based upon notice from the state that the
33 employee is determined to be unsuitable for employment
34 under this section, the licensee or facility shall not incur
35 criminal, civil, unemployment insurance, workers'
36 compensation, or administrative liability as a result of that
37 denial or termination.

38 *SEC. 7. Section 1736.6 of the Health and Safety Code*
39 *is amended to read:*



1 1736.6. (a) (1) A criminal record clearance shall be
2 conducted for all home health aides by the submission of
3 fingerprint cards to the state department for processing
4 at the Department of Justice. This criminal record
5 clearance shall be completed prior to issuing or renewing
6 a certificate. Applicants shall be responsible for any costs
7 associated with rolling the fingerprint cards. The fee to
8 cover the processing costs of the Department of Justice,
9 not including the costs associated with rolling the
10 fingerprint cards, shall not exceed thirty-two dollars
11 (\$32) per card.

12 (2) (A) Upon enrollment in a training program for
13 home health aide certification, and prior to direct contact
14 with residents, a candidate for training shall submit a
15 training and examination application and the fingerprint
16 cards to the state department to receive a criminal record
17 review through the Department of Justice. Submission of
18 the fingerprints to the Federal Bureau of Investigation
19 shall be at the discretion of the state department.

20 (B) New home health aide applicants who are
21 unemployed and unable to pay the fee charged by the
22 Department of Justice pursuant to paragraph (1) of
23 subdivision (a) due to financial hardship may request a
24 waiver for a period not to exceed six months. The request
25 for waiver shall be made in writing at the time the
26 fingerprint card is submitted for processing. The
27 applicant shall agree to pay the fee within six months of
28 employment. The failure to pay the fee within the
29 six-month period shall result in the inactivation of the
30 applicant's certificate until the fee is paid in full.

31 (b) Upon receipt of the fingerprints, the Department
32 of Justice shall notify the state department of the criminal
33 record information, as provided for in this subdivision. If
34 no criminal record information has been recorded, the
35 Department of Justice shall provide the state department
36 with a statement of that fact. If the fingerprints are
37 illegible, the Department of Justice shall, within 15
38 calendar days from receipt of the fingerprints, notify the
39 state department of that fact.



1 (c) The department shall respond to the applicant and
2 employer within 30 days from the date of receipt of the
3 fingerprint cards.

4 (d) A criminal record clearance, consistent with this
5 section shall be implemented for home health aide
6 applicants beginning July 1, 1998, and phased in for all
7 certified home health aides by June 30, 2000.

8 (e) The use of fingerprint live scan technology
9 implemented by the Department of Justice by the year
10 1999 shall be used by the Department of Justice to
11 generate timely and accurate positive fingerprint
12 identification prior to home health aide certification.

13 (f) *The department shall develop procedures to*
14 *ensure that any licensee, direct care staff, or certificate*
15 *holder for whom a criminal record has been obtained*
16 *pursuant to this section or Section 1265.6 or 1338.5 shall*
17 *not be required to obtain multiple criminal record*
18 *clearances.*

19 (g) *If the department receives a fingerprint card from*
20 *a certified home health aide 60 days prior to the*
21 *expiration of the certified health aide's certification and*
22 *the department has received no response from the*
23 *Department of Justice, or if the department is*
24 *experiencing a delay in processing the renewal of the*
25 *certified home health aide's certification at the time of*
26 *the expiration of the certified home health aide's*
27 *certification, the department may extend the expiration*
28 *of the certified home health aide's certification for 60*
29 *days. This provision shall expire August 1, 2001.*

30 SEC. 8. No reimbursement is required by this act
31 pursuant to Section 6 of Article XIII B of the California
32 Constitution because the only costs that may be incurred
33 by a local agency or school district will be incurred
34 because this act creates a new crime or infraction,
35 eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section
37 17556 of the Government Code, or changes the definition
38 of a crime within the meaning of Section 6 of Article
39 XIII B of the California Constitution.



1 Notwithstanding Section 17580 of the Government
2 Code, unless otherwise specified, the provisions of this act
3 shall become operative on the same date that the act
4 takes effect pursuant to the California Constitution.

5 ~~SEC. 7.~~

6 *SEC. 9.* This act is an urgency statute necessary for the
7 immediate preservation of the public peace, health, or
8 safety within the meaning of Article IV of the
9 Constitution and shall go into immediate effect. The facts
10 constituting the necessity are:

11 In order to ensure the health and safety of patients in
12 care facilities by making revisions to existing law at the
13 earliest possible time to allow for consistency and
14 efficiency in the implementation of fingerprinting of
15 caregivers in California, it is necessary that this act take
16 effect immediately.

